

**FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MOSES PEREZ and DEE PEREZ,

Plaintiffs,

v.

K&B TRANSPORTATION, INC. and KIARA
WHARTON,

Defendants.

Case No. 1:17-cv-02610

Judge Hon. Rebecca R. Pallmeyer

PLAINTIFFS' AMENDED STATEMENT OF ADDITIONAL MATERIAL FACTS

NOW COME the Plaintiffs, MOSES and DEE PEREZ, by and through their attorney, GEORGE BRUGESS, and for their Amended Statement of Additional Material Facts, states as follows:

TESTIMONY OF TRUCK DRIVER KIARA WHARTON (Exhibit A)

1. Kiara Wharton was hauling a critical customer load at the time of the wreck on January 20, 2016. (Exhibit A – Deposition of Kiara Wharton, page 6-7).
2. According to K&B Transportation, Inc's handbook, if the load is late, she gets fired automatically. (Exhibit A, page 9-11).
3. Wharton had only driven a truck in snowy conditions twice before the wreck in January 2016. (Exhibit A, page 33).
4. Wharton was told on a frequent basis to drive slowly in inclement weather conditions. (Exhibit A, page 35).
5. A fully loaded truck takes about half a football field (150 feet) at 55 mph to stop, and about 10-15 seconds. (Exhibit A, page 52).

6. In snow and ice conditions, you would have to start braking “way earlier.” (Exhibit A, page 52).

7. The weather conditions on the day of the accident were slick and icy. (Exhibit A, page 64).

8. Wharton’s truck was in third or fourth gear at the time of the accident. (Exhibit A, page 69).

9. Wharton was going the speed limit before the accident 55 or 60 mph. (Exhibit A, page 71-72).

10. Wharton testified that you adjust “following distance” to compensate for roadway conditions. (Exhibit A, pages 74-75).

11. Wharton was stuck in a traffic jam due to another accident just before her accident with Perez. (Exhibit A, page 102).

12. Wharton left Urbana at 2:54 am on the day of the accident. (Exhibit A, page 107, 149-150).

13. Wharton does not know how fast she was driving in the moments before the wreck. (Exhibit A, page 112).

14. Perez was in the same right lane as Wharton, directly ahead of her. (Exhibit A, page 113).

15. Wharton noticed the moment Perez spun out, but Wharton did not panic brake, she “just started nicely braking.” (Exhibit A, page 113).

16. As Wharton was braking, she felt her tractor sliding, so she eased up on the brakes even more. (Exhibit A, page 114).

17. The front passenger side of Wharton’s truck collided with the “back part where the license plate is” part of Perez vehicle. (Exhibit A, page 120-121).

18. Wharton believes the weather conditions contributed to the accident, for Perez, not her. (Exhibit A, page 123).

19. The first person Wharton called after the accident was her employer, K&B. (Exhibit A, page 124).

20. K&B told her to go see if Perez was ok and to call 911. (Exhibit A, page 125).

21. Wharton testified that prior to seeing Perez spin out, she was not sure she was going 55 mph, but she was sure she was not going faster than 60 mph. (Exhibit A, page 162-163).

22. The speed limit was 55 mph there. (Exhibit A, page 163).

23. When Wharton first saw Perez spin out Perez was about a truck length of distance between the vehicles. (Exhibit A, page 164).

24. Wharton saw that Perez was going slower than 55 mph, he was going slower than Wharton. (Exhibit A, page 164).

TESTIMONY OF PLAINTIFF MOSES PEREZ (Exhibit B)

25. It was snowy, windy and the road was covered with snow and black ice; there was 2-3 inches of snow on the road. (Exhibit B, page 30).

26. The roadway has six lanes at that location; two for I-PASS and four for cash tolls. There is a wall separating the I-PASS lanes from the pay lanes. (Exhibit B, page 31-32).

27. Perez was in the right I-PASS lane. (Exhibit B, page 32).

28. Perez was going 15 to 30 mph through the I-PASS lanes. (Exhibit B, page 33).

29. Perez hit the black ice and started spinning towards the wall on the right. (Exhibit B, page 35-36).

30. The next thing he knew he was “whacked” from the back and his vehicle ended up against the wall on the right. (Exhibit B, page 35-36).

31. Perez was traveling slower than the posted limit because of the snowy road conditions. (Exhibit B, page 79-80).

32. It was about three seconds between the time he lost traction and was hit. (Exhibit B, page 82, 91)

33. The truck was about 60 or 70 feet behind him when he started to swerve. (Exhibit B, page 86).

34. Based on the force of the impact, Perez believes the defendant was speeding. (Exhibit B, page 100).

35. Everyone was driving slowly, except the defendant. (Exhibit B, page 101).

36. 55 mph on the day of the accident was an unsafe speed given the road conditions. (Exhibit B, page 105).

TESTIMONY OF TROOPER STEPHEN KENNY (Exhibit C)

37. The accident was investigated by Officer Kenny of the Illinois State Police, and he completed the police report marked as Exhibit D herein. (Exhibit C, pgs. 20-21)

POLICE REPORT (Exhibit D)

38. According to the report it was snowing at the time of the accident.

39. The total vehicle length of the truck was 65 feet.

40. The point of first contact with the Perez vehicle was the rear.

41. The point of first contact with the truck was the front.

PHOTOGRAPHS (Exhibit E)

42. Photographs of the damage to the Perez vehicle and defendant vehicle are attached.

I-PASS TIME STAMPS FOR PEREZ AND DEFENDANT (Exhibit F)

43. According to toll records, Perez went through the toll at 5:18:11 and Wharton went through the toll at 5:18:16, five seconds later.

AFFIDAVIT OF HADAS BENHAMOU (Exhibit G)

44. The Affidavit of Hadas Benhamou.

Respectfully submitted,

By: /s/ George Brugess

John M. Power
George Brugess
COGAN & POWER, P.C.
1 E. Wacker Drive, Suite 510
Chicago, IL 60601
Telephone: 312-477-2500
Fax: 312-477-2501
jpower@coganpower.com
gbrugess@coganpower.com
Attorneys for Plaintiffs
MOSES PEREZ and DEE PEREZ

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of **PLAINTIFFS' AMENDED STATEMENT OF ADDITIONAL MATERIAL FACTS** was properly forwarded to all counsel of record as listed below by:

_____ United States Mail, postage prepaid and sealed;
_____ United States Certified Mail, postage prepaid and return receipt requested;
_____ Hand Delivery;
_____ UPS / Next Day Air;
_____ Facsimile Transmission;
X Local Rule 5.9 Electronic Filing (U.S.D.C., ND IL); and/or
_____ Email (pdf)
on July 10, 2018.

Kathleen McDonough
Lamis G. Eli
Wilson Elser Moskowitz Edelman & Dicker LLP
55 W. Monroe Street, Suite 3800
Chicago, IL 60603
(312) 704-0550
(312) 704-1522 (Fax)
(312) 821-6114 (Kathleen Direct)
(312) 821-6105 (Lamis Direct)
Kathleen.mcdonough@wilsonelser.com
Lamis.eli@wilsonelser.com
Gail.serritella@wilsonelser.com

For Defendants K&B Transportation, Inc. and Kiara Wharton

/s/George Brugess

John M. Power
George Brugess
COGAN & POWER, P.C.
1 E. Wacker Drive, Suite 510
Chicago, IL 60601
Telephone: 312-477-2500
Fax: 312-477-2501
jpower@coganpower.com
gbrugess@coganpower.com
Attorneys for Plaintiffs
MOSES PEREZ and DEE PEREZ